

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to environmental management systems and providing an opportunity for public comment

The Environmental Protection Commission hereby proposes to amend Chapter 111, “Annual Reports of Solid Waste Environmental Management Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455J.4(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 455J.

Purpose and Summary

Many of the proposed amendments are necessary to conform Chapter 111 to 2017 Iowa Acts, House File 202, signed by Governor Branstad on April 12, 2017. House File 202 amended the Iowa Code chapter related to Environmental Management Systems, Iowa Code chapter 455J. This legislation removed the Solid Waste Alternatives Program Advisory Council (council) from Iowa Code chapter 455J. This council had been vital in the oversight of the establishment of the Environmental Management Systems program; however, once the program was established, it was determined that the council was no longer necessary. House File 202 shifted the duties of the council to the Department of Natural Resources. This legislation also changed the due date by which the Department of Natural Resources must review the annual report submitted by each designated system to determine if that system remains in compliance with Iowa Code chapter 455J (formerly the council’s duty). The proposed amendments implement these changes from House File 202. The amendments also reformat and clarify the required annual report submittal information.

Specifically, the proposed amendments:

- Eliminate the council and move the council’s prior responsibilities to the Department of Natural Resources;
- Amend definitions to be consistent with terminology used in Iowa Code chapter 455J;
- Reorganize rule 567—111.6(455J) to clarify annual report submittal information requirements for program participants; and
- Amend rule 567—111.7(455J) to change the annual report review date from October 1 to January 1 of each year.

Fiscal Impact

This rule making has no negative fiscal impact to the State of Iowa. This rule making may result in a small cost savings to the Environmental Management Systems program because the program will no longer have to pay for council members’ travel costs and for the routine meetings held by the council. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 14, 2018. Comments should be directed to:

Leslie B. Goldsmith
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319
Email: leslie.goldsmith@dnr.iowa.gov
Phone: 515.725.8319

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held. Upon arrival, attendees should proceed to the 4th floor to check in at the DNR Reception Desk to sign in and be directed to the appropriate hearing location:

February 13, 2018, from 10 a.m. to 1 p.m.
Conference Room 5 West
Wallace State Office Bldg.
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **567—111.4(455J)**, definition of “Plan component,” as follows:

“*Plan component*” means each of the six areas that are required to be addressed in an environmental management system, including: yard organics waste management, hazardous household waste materials collection, water quality improvement, greenhouse gas reduction, recycling services, and environmental education.

ITEM 2. Adopt the following **new** definition of “Department” in rule **567—111.4(455J)**:
“Department” means the department of natural resources.

ITEM 3. Rescind the definition of “Council” in rule **567—111.4(455J)**.

ITEM 4. Amend rule 567—111.6(455J) as follows:

567—111.6(455J) Contents of annual reports. The following elements shall be included in the annual report.

111.6(1) to 111.6(4) No change.

~~**111.6(5) Plan components.**~~ Objectives and targets. The following elements shall be addressed for each of the six plan components:

~~a. Objectives and targets.~~ This element describes The annual report shall describe the objective(s) relevant to the each of the six plan component components and the targets established for achieving the objective(s).

~~b. 111.6(6) Action plan.~~ This element provides The annual report shall provide a plan that describes the actions necessary to achieve the objectives and targets. The plan includes the identification of the individuals and organizations responsible for carrying out specific tasks, time lines for completion of each step in the plan, and a schedule for periodically reviewing and updating, as conditions dictate, the objectives and targets.

111.6(7) Roles and responsibilities. The annual report shall include identification and documentation of individuals and organizations responsible for specific tasks to carry out the objectives.

~~e. 111.6(8) Communication and training.~~ This element describes The annual report shall describe the processes that have been established for internal and external communication.

~~(1) a.~~ External communication includes reaching out to those groups and organizations that have been identified as having an interest, stake, or role in the planning or service area’s ongoing EMS program. There shall also be procedures for receiving and responding to relevant communication from external interested parties.

~~(2) b.~~ Internal communication is directed to individuals, organizations and entities that have a role or responsibility within the action plan. Internal communication includes a process to ensure that all responsible parties are familiar with the EMS and have the training necessary to capably execute their roles. A description of the training provided to responsible parties shall be included.

~~d. 111.6(9) Monitoring and measurement.~~ This element describes The annual report shall describe the documented process for monitoring key activities and, at a minimum, measuring performance related to each objective and target.

~~e. 111.6(10) Assessment.~~ Audit/Assessment. This element provides The annual report shall provide documented procedures for assessing the performance of the component’s action plan(s) in terms of achieving the stated objectives and targets and conformance with the overall EMS. The assessment element shall draw conclusions from the performance measurements.

a. Internal audit. A copy of the result of the latest internal audit that includes the date(s) it was conducted and the identity of the auditor(s) shall be provided as part of the report. An internal audit shall be conducted each state fiscal year.

b. External audit. An external audit shall occur each state fiscal year. The date of the latest external audit or the date the audit will take place, along with the identity and pertinent qualifications of the independent, third-party auditor(s), shall be provided. The results of the external audit shall be incorporated into the report. The department has a prequalification process for external auditors.

f. 111.6(11) Reevaluation and modification. ~~The reevaluation~~ Reevaluation and modification element is an activity are activities that allows allow a planning or service area to improve and strengthen the EMS on an ongoing basis. ~~This element considers~~ The annual report shall describe areas where the EMS has met, exceeded, or failed to meet expectations. For each plan component, the report shall identify root causes of those outcomes and develop revised goals and activities appropriate to each.

~~111.6(6) Internal audit.~~ A copy of the result of the latest internal audit that includes the date(s) it was conducted and the identity of the auditor(s) shall be provided as part of the report. An internal audit shall be conducted each state fiscal year.

~~111.6(7) External audit.~~ An external audit shall occur each state fiscal year. The date of the latest external audit or the date the audit will take place, along with the identity and pertinent qualifications of the independent, third-party auditor(s) shall be provided. The results of the external audit shall be incorporated into the report. The department has a prequalification process for external auditors.

ITEM 5. Amend rule 567—111.7(455J) as follows:

567—111.7(455J) Evaluation criteria. Each annual report shall be reviewed by the council department, and a determination as to whether a planning or service area's EMS is in compliance with Iowa Code section 455J.3 shall be made by ~~October~~ January 1 of each year. Reports shall be reviewed for the following:

1. Completeness in terms of addressing all of the elements set forth in 567—111.6(455J).
2. Progress toward achieving the objectives and targets set forth in the EMS.
3. Clear demonstration of continuous improvement in terms of progress toward achieving the objectives and targets set forth in the EMS.

Upon achievement of these objectives and targets, a reevaluation and decision will be needed to verify whether a new target should be assigned to an objective or, if the objectives and targets were not achieved, what new initiatives should be incorporated into the EMS. Planning and service areas shall review procedures on a regular basis and revise as appropriate.

ITEM 6. Amend rule 567—111.8(455J) as follows:

567—111.8(455J) Evaluation outcomes.

111.8(1) If the council department determines that the annual report adequately demonstrates compliance with the requirements of Iowa Code section 455J.3, the planning or service area shall remain designated as an EMS and shall continue to be qualified for the incentives set forth in Iowa Code section 455J.5.

111.8(2) If the council department determines that the annual report clearly demonstrates that the planning or service area's EMS is no longer in compliance with Iowa Code section 455J.3, the council department may recommend to the environmental protection commission the revocation of the EMS designation. If the commission concurs with the council's department's recommendation, the planning or service area shall adhere to the comprehensive planning requirements in 567—Chapter 101.

111.8(3) Failure by a planning or service area to submit an annual report by September 1 in any year will result in revocation of the EMS designation, following which the planning or service area shall adhere to the comprehensive planning requirements in 567—Chapter 101.